THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20753 OF 2005

DATED:22.9.2005

Between:

Sri Kasarapu Bangaru Setty

…Petitioner

And

The Gajuwaka Municipality,

Rep. by its Commissioner,

Visakhapatnam District

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20753 OF 2005

ORDER:

The petitioner claims to be absolute owner of the property bearing D.No.10-8-68 in Gajuwaka Municipality. According to him, he constructed the said commercial complex after obtaining permission of respondent Municipality on 3.12.1992. The respondent, however, issued notice purporting to be under Section 228 of the A.P. Municipalities Act, 1965 (for short, the Act) calling upon the petitioner to remove the structures in the cellar portion within seven days. This is assailed in the Writ Petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondent - Municipality.

As rightly pointed out by the learned Counsel for the petitioner that the power under section 228 of the Act enabling the Commissioner to demolish or alter the building work unlawfully commenced, carried on or completed has to be exercised first by passing an order under subsections (1) and (2) of Section 228 of the Act and then pass an order under subsection (3) of Section 228 of the Act confirming the provisional order under section 228(1) of the Act. At the stage of provisional order, the Commissioner is required to keep in mind the conditionalities mentioned in clause (i) of subsection (1), record a finding thereon and make a provisional order requiring the owner of the building either to make alterations in tune with the building premises, the provisions of the Act, Rules and Byelaws or pass an order refraining the builder from proceeding further with the construction. The said provisional order has to be served with a notice as contemplated under subsection (2) of Section 228 of the Act giving reasonable time to the builder/owner of the building to make a representation. If the owner fails to show cause to the satisfaction of the Commissioner then the provisions of subsection (3) of Section 228 of the Act are enforced.

The impugned notice is silent as to whether it is a provisional order or an order under section 228(3) of the Act though the tone and tenor of the order would show that it is a final order directing the owner to remove the illegal constructions within seven days of the said notice. Therefore, petitioner is directed file a representation before the Commissioner, if not already filed, enclosing the approved plan issued by the Gajuwaka Municipality in 1992 pursuant to which constructions are made. On such representation being filed, the Commissioner shall consider the same and pass appropriate order within a period of two weeks from the date of receipt of a copy of this order. Till then, no coercive steps shall be taken against the petitioner.

The writ petition, with the above observations and directions, is disposed of. No costs.

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(V.V.S.RAO, J)

22.9.2005

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Note:CC by 24.9.2005.

(B.O)

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